

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DWIGHT LAMAR YOUNG,

Petitioner,

v.

Case No. 22-10964

NOAH NAGY,

Respondent,

**OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS
AS DUPLICATIVE, DECLINING TO ISSUE A CERTIFICATE OF APPEALABILITY,
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS***

Petitioner Dwight Lamar Young, incarcerated at the Cotton Correctional Facility in Jackson, Michigan, seeks the issuance of a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In his *pro se* application, Petitioner challenges his conviction for possession with intent to deliver over 1,000 grams of cocaine and possession of a firearm in the commission of a felony.

Petitioner previously filed a petition for writ of habeas corpus, which challenges the same conviction and sentence. The claims and arguments are identical to the ones raised in the current petition. Petitioner's first petition remains pending before Judge Gershwin A. Drain. See *Young v. Nagy*, No. 2:22-CV-10716 (E.D. Mich.) (Drain, J.). No decision has been rendered in that case.

I. DISCUSSION

The instant petition is subject to dismissal because it is duplicative of Petitioner's pending habeas action in Case No. 22-CV-10716.

A suit is duplicative, and thus subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999) (internal citations omitted). Petitioner's current habeas petition is subject to dismissal as being duplicative of his still pending first habeas petition, because both cases seek the same relief. *Id.*; *see also Davis v. U.S. Parole Com'n*, 870 F. 2d 657 (Table), No. 1989 WL 25837, * 1 (6th Cir. Mar. 7, 1989) (district court can properly dismiss a habeas petition as being duplicative of a pending habeas petition, where the district court finds that the instant petition is essentially the same as the earlier petition); *Warren v. Booker*, No. 06-CV-14462-DT, 2006 WL 3104696, at * 1 (E.D. Mich. Oct. 31, 2006) (Cleland, J.) (same). The instant petition challenges the same convictions and raises the same claims as the petition in the case pending before this court in Petitioner's previously filed habeas petition. Consequently, this petition for writ of habeas corpus will be dismissed.

The court will also deny a certificate of appealability to Petitioner. Obtaining a certificate of appealability, when a claim is dismissed on procedural grounds, requires that a prisoner must both make a substantial showing of the denial of a constitutional right *and* that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *see also* 28 U.S.C. § 2253(c)(2); Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254. Here, the court finds that any reasonable jurist reviewing Petitioner's present application would find it to be clearly duplicable, so the court declines to grant a certificate of appealability.

II. CONCLUSION

For the reasons stated in this opinion, the court dismisses this action as duplicative, and the court denies Petitioner a certificate of appealability because his current petition is duplicative of his still pending habeas petition. *See Maske v. Murphy*, 357 F. App'x. 981, 982-83 (10th Cir. 2009). The court will also deny Petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. *See Allen v. Stovall*, 156 F. Supp. 2d 791, 798 (E.D. Mich. 2001). Accordingly,

IT IS ORDERED that the petition (ECF No. 1) is SUMMARILY DISMISSED.

IT IS FURTHER ORDERED that Petitioner is denied a certificate of appealability or leave to appeal *in forma pauperis*.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 18, 2022

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 18, 2022, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(810)292-6522

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